

STATE OF ILLINOIS

DEPARTMENT OF PROFESSIONAL REGULATION

DEPARTMENT OF PROFESSIONAL REGULATION )  
of the State of Illinois, Complainant )  
v. ) No. **86-54**  
ANDREW PUNDY ) ~~86-716~~  
License No. 036-053081, Respondent )

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDATION TO THE DIRECTOR

Now comes the Medical Disciplinary Board (hereinafter sometimes referred to as the "Board") of the Department of Professional Regulation of the State of Illinois and, after conducting a hearing in this matter, a majority of its members hereby makes the following Findings of Fact, Conclusions of Law and Recommendation to the Director:

FINDINGS OF FACT

1. Andrew Pundy, Respondent, is now a duly registered physician and surgeon in the State of Illinois, having been issued a Certificate of Registration, License No. 036-053081, by the Department of Professional Regulation. Respondent's license is in active status.
2. On November 17, 1986 the Department filed a Complaint against Dr. Pundy (Respondent) which alleged that he had engaged in sexual acts with one of his female patients while she was under his care. The Complaint further alleged that Respondent engaged in an improper "dual relationship" with the female patient, acting as both her psychiatrist and employer. Additional allegations included that Respondent inappropriately utilized this individual as a therapist in his office

although she did not have the training or experience to do so.

3. Pre-hearing procedure delayed the beginning of evidentiary proceedings until September 17, 1987. Evidentiary hearings were held on the following dates (Board members present on those dates appear in parentheses):

September 17, 1987	(Dr. Caruso) (Mr. Wikoff)	February 3, 1988	(Dr. Caruso) (Mr. Wikoff)
September 18, 1987	(Dr. Watts) (Mr. Wikoff)	February 4, 1988	(Mr. Wikoff)
October 28, 1987	(Dr. Caruso) (Mr. Wikoff)	February 15, 1988	(Mr. Wikoff)
November 3, 1987	(Dr. Watts) (Mr. Wikoff)	February 16, 1988	(Mr. Wikoff)
November 4, 1987	(Dr. Caruso) (Mr. Wikoff)	March 2, 1988	(Mr. Wikoff)
November 24, 1987	(Mr. Wikoff)	March 30, 1988	(Mr. Wikoff)
January 26, 1988	(Dr. Caruso) (Mr. Wikoff)	March 31, 1988	(Mr. Wikoff)
January 28, 1988	(Dr. Caruso) (Mr. Wikoff)	April 12, 1988	

4. A quorum of the Board was either present or listened to or reviewed the transcript of the evidence presented on the above dates, as evidenced by their signatures below.
5. Respondent was present at the hearing and was represented by counsel, namely, Sandra Nye.
6. The Department was represented at the hearing by its attorneys, Hal Taylor and John M. Goldberg.



7. After the presentation of all evidence and arguments, the Medical Disciplinary Board deliberated and made its Findings of Fact, Conclusions of Law and Recommendation to the Director.
8. The record in this case exceeds two thousand five hundred (2500) pages of transcript and includes approximately forty (40) exhibits. An exhaustive review of the activities of Respondent and the female in question, Rebecca Besch, has been explored.
9. There is no contest that Respondent treated Ms. Besch beginning sometime in March of 1982 for what Dr. Pundy diagnosed as acute anxiety disorder related to her employment and financial situation. It is also uncontested that sometime in early July of 1982 Respondent hired Ms. Besch to work in his office on Michigan Avenue in Chicago. The parties also agree that sexual relations took place between Respondent and Ms. Besch. There were disagreements about:
  - a) the date on which the psychiatrist/patient relationship ended;
  - b) the date on which the sexual relations began;
  - c) the role Ms. Besch played as therapist/co-therapist in Respondent's office.
10. The parties agree that if the Respondent engaged in sexual relations with Ms. Besch while she was his patient, then he has violated the standards of practice applicable to him. The defense in this case argues that Ms. Besch was no longer a patient when sexual relations began.

11. In arriving at factual findings, the credibility of statements made by Ms. Besch and Respondent must be taken into account in deciding which factual allegations have been proven.
12. Rebecca Besch is an intelligent, articulate, 45 year old woman who provided the primary complaint against Respondent. By her account, she met Respondent in March of 1982 while she was hospitalized at Illinois Masonic Hospital in Chicago for a viral infection. When no cause for her illness could be readily determined, her treating practitioner suggested a psychiatric consult, which brought in the Respondent. Ms. Besch saw Respondent in scheduled therapy sessions at his office on Michigan Avenue in Chicago in March and April of 1982. She was once again hospitalized in May of 1982 for a hysterectomy and continued to see Respondent after that hospitalization in regularly scheduled therapy sessions at his office.
13. Ms. Besch stated that she first engaged in sexual activities with Respondent on June 12 or June 15, 1982. She described in some detail the first encounter and noted that their sexual activity went on until late November of 1983.
14. Ms. Besch testified that she was approached by Respondent to work for him after their initial sexual encounter. She said that she performed various services for him between June 16, 1982, and July 1, 1982, as her initial employment duties, for which she

received compensation in July of 1982. The checks included in Department's Exhibit No. 8 seem to bear out this portion of Ms. Besch's testimony. Her regular office duties began in July.

15. Respondent admitted speaking to Ms. Besch by telephone a couple of times in June and to seeing her two or three times before she began work in July.
16. Although she and Respondent no longer engaged in regularly scheduled therapy sessions after June 5, 1982, she considered Respondent to be her therapist. Ms. Besch noted that the employment arrangement allowed her to be present in Respondent's office to discuss her problems on a free-floating basis. She also noted that he discussed his problems with her, including his family situation.
17. Ms. Besch testified about sexual activities over the course of her involvement with Respondent, including use of sexual paraphernalia at his office.
18. Ms. Besch testified extensively about the end of the relationship with Respondent and its effect on her. She left the impression that she considered him to be a "god" and that the termination of the affair and her job with the Respondent had left her unable to hold a job and unable to successfully engage in intimate relationships with men. The demeanor of Ms. Besch was of someone who has been unable to cope with various situations due to the continuing adverse impact on her of the termination of this affair in November of

1983. There was also extensive testimony about her "suicide gesture" (as the defense characterized it) in which she took a disputed quantity of Tranxene approximately a day after being fired by the Respondent and was taken by Dr. Pundy to a hospital for emergency treatment.

19. The Hearing Officer's Report notes that Ms. Besch stated that her primary motive for going forward with this case was to assure that another woman would not be victimized by Respondent. The defense provided testimony from witnesses who reported that Ms. Besch told them that she would "get" Respondent following his termination of the relationship with her, but the Board notes that these threats seem to have come within a relatively short period after termination, when bitterness over these events would not be unexpected and, while Ms. Besch did express concern over the Respondent's possible future actions, the transcript shows that she testified that she was advised to bring this matter to the Department's attention.
20. The defense in this case has taken great pains to call into question the credibility of Ms. Besch, and this evidence must also be carefully weighed.
21. Extensive and time-consuming testimony was heard in this case with regard to Ms. Besch's employment history, and the Hearing Officer has commented upon the effect of this testimony on his credibility



findings. The Board is not convinced that either the testimony of Ms. Besch or her employers should be given much weight in these proceedings. All who testified on the employment history issues have obvious interests to protect, some of them legal, and therefore can be expected to remember events and situations in a light most favorable to themselves. More importantly, whether Ms. Besch's work problems stem from Respondent's actions or other factors does not relate in any meaningful way with the medical issues in this case except to indicate that in March of 1982, Ms. Besch's problems functioning in the workplace may have been far more serious than Dr. Pundy realized.

22. The Hearing Officer comments unfavorably upon Ms. Besch's "visceral and caustic" comments. The Board notes that the record in this case is replete with visceral and caustic comments--not all of which were made by Ms. Besch. All Board members who attended these hearings are aware of the agitated atmosphere under which this case was tried.
23. Likewise the Board does not attach the same significance as the Hearing Officer to Ms. Besch's current inability to remember in greater detail what she told Dr. Pundy about her past psychiatric history during a period when all parties would concede that she was under some degree of psychiatric stress. Whatever she told Dr. Pundy was sufficient for him to

be aware on March 8, 1982, of at least "one past psych (sic) hospitalization five years before and two years of outpatient therapy" (Department's Exhibit No. 15).

24. That Ms. Besch does not remember why a prescription for Tetracycline was written in October of 1983 is also of minor importance given the passage of time. However, the testimony about the filling out of insurance application forms is extremely troubling to the Board. Whether or not Ms. Besch actually filled out all of the information contained on these forms herself, signed off on forms filled out by others, or, as she testified, signed blank forms, she is responsible for their content, and important information was left off, and incorrect information is found on Respondent's Exhibit 7. Ms. Besch's explanations on these points are not wholly satisfactory, though the Board would not go so far as to conclude that conscious fraud was committed.
25. However, Dr. Pundy's explanations for how questioned information got on "Attending Physician's Statements" submitted in connection with Ms. Besch's disability claims, or how he received payments from third-party payors at his billing rates rather than reduced rates for services provided by Ms. Besch, and his contention that he did not know how much Ms. Besch was at any point being paid because he customarily signed checks in blank, are also unsatisfactory and raise questions about his credibility.

26. The Department was also able to show that Dr. Pundy's testimony given in this case about how Ms. Besch's medical records came to be destroyed or lost differed significantly from the answer he gave in interrogatories in the civil case. (Department's Exhibit 16)
27. While the Board members who attended the hearings agree with the Hearing Officer that Dr. Pundy's manner of testifying was very controlled, they do not agree, based upon their own viewing of his demeanor, that he never attempted to avoid answering questions in a way that might damage his position. As an example, that there existed a second appointment book other than the one the defense sought to use in this trial might never have been revealed except for the Hearing Officer's timely questioning. The inconsistencies noted in the record also serve to illustrate that a controlled demeanor may not always be an absolute guarantee of truthfulness.
28. The question of when sex began illustrates the inherent difficulty of making factual determinations on contested issues in this case. The Hearing Officer concludes that the Respondent is telling the truth, and that sex began in the summer of 1983. Yet Ms. Besch's son testified that he briefly saw Dr. Pundy in bed with his mother in the summer of 1982, having observed what he recognized as Dr. Pundy's car parked in her driveway.

29. The Hearing Officer concludes that Dr. Pundy's testimony is supported by "credit card records" to show that the Respondent was not in the area when the first sexual encounter supposedly occurred. Therefore, he finds that the corroborative evidence is present in this instance that is so often missing throughout this record.
30. However, the records that the Hearing Officer relies upon--a customer Visa statement, with no copies of the actual receipts--are not a part of the record in this case. After the Respondent admitted that both he and his wife had access to the account and that there was no way to tell from the statement whether he or his wife made the charges, the statement was never offered into evidence. Given these circumstances, the Board does not rely on these "records" at all.
31. That being the case, it falls to the Board to state that were this corroborating witness not Ms. Besch's son, or were the standard of proof less than clear and convincing, the Board would be inclined to give credence to this incident and find against Dr. Pundy on the timing of the first sex issue.
32. In short, the Board concludes, based upon the members' viewing of the witnesses' demeanor and review of the record, that, at the very least, both Ms. Besch and Dr. Pundy attempted to tailor their testimony to their own ends, and therefore, neither Ms. Besch nor Dr. Pundy should be wholly believed as to factual matters



absent corroborating evidence. This is why the Board cannot agree with the Hearing Officer that Dr. Pundy's version of the contested events is always the true one.

33. Reasonableness and credibility have less to do with the Board's decision than lack of independent corroborating evidence of either the Department's or Respondent's positions. Therefore, this Board's decision is less based on a determination of factual issues, than on fundamental principles to be observed by all doctors, especially those working in the mental health field, regarding the entering into sexual relationships with "former" patients.
34. The Board concludes that the Respondent provided what he characterized as brief, supportive psychotherapy to Ms. Besch from March through June 5, 1982; that the formal psychiatric relationship ended on June 5, 1982; that between June 5, 1982, and the day Ms. Besch actually began work in his office, Respondent and Ms. Besch talked by telephone at least three times and met at least twice, and that she provided some services to him for which she was later compensated; that he hired her to work in his office in July of 1982; that he utilized her to provide support to some of his patients under his supervision; that he began a sexual affair with her at least as early as the summer of 1983; that the affair and employment was unilaterally ended by the Respondent in late November of 1983. The next level of analysis is to determine

whether any breach of standards of practice has resulted from those activities.

35. The parties provided the Board with no conclusive rules of ethical conduct dealing with sexual relationships with former patients. However the rules applicable to relations with current patients provide some guidance. While the medical profession has acknowledged that psychiatrists share the same goals as other physicians, there are special ethical problems that differ in coloring and degree from those faced by doctors operating in other specialties. As stated in The Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry:

"[ ] the necessary intensity of the therapeutic relationship may tend to activate sexual and other needs and fantasies on the part of both the patient and therapist while weakening the objectivity necessary for control."

The American Psychiatric Association then goes on to conclude that sexual relations with a patient are unethical.

36. Further, Section 2-D of the American Psychiatric Association's Opinions of the Ethics Committee on the Principles of Medical Ethics notes that "exploitation of a patient can occur after termination of treatment." (emphasis added).

37. The Department presented Dr. James Cavanaugh as its expert witness on the practice issues. When asked to consider this case using Dr. Pundy's description of his relationship with Ms. Besch, Dr. Cavanaugh relied upon the psychiatric phenomena of transference and countertransference to explain his analysis. Dr. Cavanaugh testified that:

"[A] patient always brings into therapy issues, experiences, psychological experiences of the past that do not have, as their origin, what is going on in the therapeutic relationship, itself. How those transference dynamics are handled is part of the training, skill, of the therapist in the continuation of the therapeutic process with the patient. . . Countertransference relates to the therapeutic dynamic where the therapist has the potentiality of bringing into the therapeutic relationship in question issues from the past that are not directly related to the process of ongoing therapy, and which if not identified by the therapist, could interfere with or distort the process of therapy with the patient." (tr. p. 484, 488).

Dr. Cavanaugh saw a continuum leading from the psychiatrist/patient relationship which initially elicited transference feelings of Ms. Besch onto the Respondent and a countertransference of Respondent's

feelings onto Ms. Besch. Dr. Cavanaugh did not see these psychiatric states conveniently ending when formal therapy ended. He found that they were complicated by the hiring of Ms. Besch shortly after her formal therapy had ended and by the utilization of her by Respondent to provide counselling in his office. Adding the sexual relations exacerbated the problem. Dr. Cavanaugh also noted the danger of patient self-harm at the end of such a relationship as one of the possible detrimental results of sexual activity between the therapist and a patient. Dr. Cavanaugh rejected the defense's contention that such transference/countertransference issues don't arise in the context of brief therapy modalities.

38. Dr. Cavanaugh believed that Respondent breached standards of care applicable to psychiatrists by not recognizing and appropriately reacting to the issues of transference and countertransference in this case.
39. The defense provided several experts who disagreed with his analysis in whole or in part. Dr. Patrick Staunton did not find the necessary link to transference and countertransference which Dr. Cavanaugh found. Dr. Anne Seiden could not find factors in the record of this case which would lead to Dr. Cavanaugh's conclusions of transference/countertransference. Additionally, Gary Schoener, a psychologist in the State of Minnesota who evaluated Respondent with the acquiescence of the Department,



found nothing in the record or his evaluation to pinpoint countertransference as the explanation for the events in this case.

40. Similarly, none of Respondent's experts found sufficient basis to conclude that Respondent's use of Ms. Besch in a supportive role for some of his patients was improper. Nor did they find it unacceptable or unusual that a therapist would seek to hire a former patient who might be able to perform functions related to his office practice for which he had a present need to employ someone.
41. The consensus of opinion of Respondent's experts was that Respondent's activities should not be viewed as a continuum but as discreet acts, none of which violated standards applicable to him.
42. Gary Schoener spoke to this issue. Some background on him is in order, however, before his opinion is set forth. The Department did not object to Schoener's evaluation of Respondent. Schoener has been extensively involved with evaluation/ treatment of professionals who sexually exploit their patients. He has been called upon to assess a practitioner and testify concerning his assessment in criminal and administrative proceedings. He is not a "defendant's expert"; rather, his assessments have been utilized as the basis for discipline of professional licenses in similar proceedings and have resulted in criminal penalties as well.

44. Following evaluation of Respondent, Schoener concluded that there was no reason to believe that Respondent had utilized his position as a psychotherapist to exploit the therapy relationship such that Ms. Besch would engage in sex with him. Additionally, Schoener did not see Respondent posing a threat to female patients in the future.
45. As impossible as it is to resolve all of the factual disputes in this case, a pattern of behavior does emerge from the record upon which the Board can make its decision.
46. After review of all of the exhibits and the huge transcript in this case, it becomes clear that this patient was extremely vulnerable and troubled in March of 1982. She had a long-standing psychiatric history that evidenced past failures to successfully cope with what were admittedly at times extremely stressful events, including the apparent drug dependence of her daughter. There was a past history of hospitalization for depression, at least one suicide gesture or attempt, at least two years of outpatient psychotherapy and a present inability to handle her work situation that was severe enough to lead to another hospitalization and a psychiatric consult by Dr. Pundy.
47. Likewise, the testimony and evidence of Ms. Besch's inability to secure alternative employment up to the time that Dr. Pundy hired her, and her financial demands (as testified to by the Respondent), indicate to the Board, and should have indicated to Dr. Pundy,

that she continued to have problems after June of 1982 which were related to the issues which brought her under his care initially.

48. Dr. Pundy ignored these warning signs, did not reinitiate therapy or secure other treatment for Ms. Besch. Instead, to complicate matters, perhaps during a period when he admits that he was feeling "distant" from his marriage, he consented to enter into a sexual relationship with Ms. Besch.
49. Even after Ms. Besch's suicide gesture or attempt in November of 1983, the Respondent did not do anything further to see to her proper care except to take her to the emergency room and pay her severance monies.
50. One of the dangers touched upon during this trial is the loss of the therapist to the patient once a sexual relationship begins. Respondent began to be lost to Ms. Besch when he began to act in his own interest and not in the interest of Ms. Besch. This was no less than abandonment by degrees, culminated by the events of November, 1983.
51. The Department was not able to show that Dr. Pundy consciously exploited this patient. But conscious exploitation is not necessary to find that a psychiatrist has not met the standards of care owed to a patient. This is an issue that Dr. Cavanaugh touched on in his testimony, and the medical members of the Board refer to their own training to recall being taught how to handle seductive or difficult patients.

This area of social relations with patients and former patients is not so fraught with specialty-specific experiences that the Board members, even the public members, cannot determine what is right.

52. What is right is that a patient should not be harmed by a doctor. That principle applies whether formal termination has occurred or not. An obligation attaches to a patient once he or she comes under the care of a physician that does not disappear until there has been a proper ending to that relationship.
53. As has been noted above, a special measure of emotional dependence arises, indeed may even be encouraged in many cases, from the psychiatrist/patient relationship--no matter how brief or supportive--that finds its genesis in the emotional vulnerability of the patient. At best, Dr. Pundy was not fully conscious of this patient's vulnerability, and this insensitivity to her condition ultimately led him to act in ways clearly detrimental to her welfare.
54. That this patient may have been a most difficult case, and during the course of this hearing, may not always have been the most sympathetic of witnesses, should not relieve the Respondent of his responsibility to have properly treated her, as his training should have prepared him to do. Having failed to fully resolve Ms. Besch's initial problems, having allowed his own feelings, both towards Ms. Besch and apparently towards his marriage, to cloud his objectivity to the



detriment to this patient, he must suffer the consequences.

#### CONCLUSIONS OF LAW

1. That the Medical Disciplinary Board of the Department of Professional Regulation of the State of Illinois has jurisdiction over the subject matter and of the parties in this case.
2. That as to Count I of the Complaint, the Medical Disciplinary Board finds that the Respondent's conduct, as set forth in these Findings of Fact, constitutes unprofessional conduct of a character likely to harm the public, and that such conduct violates Illinois Revised Statutes (1981,1983), Chapter 111, paragraph (4433) 5.
3. Given the Board's conclusion as to Count I, the Board finds it unnecessary to reach the issues raised in Counts II and III and declines to draw Conclusions of Law as to these Counts.

#### RECOMMENDATION

The Medical Disciplinary Board of the Department of Professional Regulation of the State of Illinois, after making the above Findings of Fact and Conclusions of Law, recommends to Stephen F. Selcke, the Director of the Department of Professional Regulation, that the Certificate of Registration, License No. 036-053081, of Andrew Pundy be suspended for Six (6) Months, to be followed by a period of probation of Two (2) Years. During the probationary period, the Respondent shall continue therapy, and Respondent's treating therapist shall report quarterly to the Department on Respondent's progress in a form acceptable to the Department.

DATED THIS 6<sup>th</sup> DAY OF July, 1988.

CHAIRMAN

MEMBER

MEMBER

MEMBER

MEMBER

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Re. [unclear]  
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STATE OF ILLINOIS

DEPARTMENT OF PROFESSIONAL REGULATION

DEPARTMENT OF PROFESSIONAL REGULATION )  
of the State of Illinois, Complainant )  
v. )  
ANDREW PUNDY )  
License No. 036-053081, Respondent )

86-54  
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REPORT AND RECOMMENDATION

This Report and Recommendation is being submitted to the Medical Disciplinary Board pursuant to Section 35 of the Medical Practice Act which became effective on May 22, 1987 (Public Act 85-0004). A complete copy of the transcript of these proceedings was submitted to me on May 2, 1988.

BACKGROUND

On November 17, 1986 the Department filed a Complaint against Dr. Pundy (Respondent) which alleged that he had engaged in sexual acts with one of his female patients while she was under his care. The Complaint further alleged that Respondent engaged in an improper "dual relationship" with the female patient, acting as both her psychiatrist and employer. Additional allegations included that Respondent inappropriately utilized this individual as a therapist in his office although she did not have the training or experience to do so.

Pre-hearing procedure delayed the beginning of evidentiary proceedings until September 17, 1987. Evidentiary hearings were held on the following dates (Board members present on those dates appear in parentheses):

September 17, 1987	(Dr. Caruso) (Mr. Wikoff)	February 3, 1988	(Dr. Caruso) (Mr. Wikoff)
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The Department was represented by Hal Taylor and John Goldberg. The Respondent was represented by Sandra Nye.

#### FINDINGS OF FACT

The record in this case exceeds two thousand five hundred (2500) pages of transcript and includes approximately forty (40) exhibits. An exhaustive review of the activities of Respondent and the female in question, Rebecca Besch, has been explored.

There is no contest that Respondent treated Ms. Besch beginning sometime in March of 1982 for anxiety related to her employment. It is also uncontested that sometime in July of 1982 Respondent hired Ms. Besch to work in his office on Michigan Avenue in Chicago. The parties also agree that sexual relations took place between Respondent and Ms. Besch.

The crucial disagreements which must be resolved include:

- a) the date on which the psychiatrist/patient relationship ended;



- b) the date on which the sexual relations began;
- c) the role Ms. Besch played as therapist/co-therapist in Respondent's office;
- d) whether the standards of practice applicable to Respondent were breached.

The parties agree that, if the Respondent engaged in sexual relations with Ms. Besch while she was his patient, then he has violated the standards of practice applicable to him.

In arriving at factual findings, the credibility of statements made by Ms. Besch and Respondent must be determined. In arriving at the conclusion as to whether or not Respondent violated standards of practice, an analysis of the position of the expert witnesses must be undertaken.

Rebecca Besch is an intelligent, articulate, 45 year old woman who provided the primary complaint against Respondent. By her account, she met Respondent in March of 1982 while she was hospitalized at Illinois Masonic Hospital in Chicago for a viral infection. When no cause for her illness could be readily determined, her treating practitioner suggested a psychiatric consult, which brought in the Respondent. Ms. Besch saw Respondent in scheduled therapy sessions at his office on Michigan Avenue in Chicago in March and April of 1982. She was once again hospitalized in May of 1982 for a hysterectomy and continued to see Respondent after that hospitalization in regularly scheduled therapy sessions at his office.

Ms. Besch stated that she first engaged in sexual activities with Respondent on June 12 or June 15, 1982. She

described in some detail the first encounter and noted that their sexual activity went on until November of 1983.

Ms. Besch testified that she was approached by Respondent to work for him after their initial sexual encounter. She said that she performed various services for him between June 16, 1982 and July 1, 1982 as her initial employment duties for which she received compensation in July of 1982. Her regular office duties began in July.

Although she and Respondent no longer engaged in regularly scheduled therapy sessions after June 5, 1982, she considered Respondent to be her therapist. Ms. Besch noted that the employment arrangement allowed her to be present in Respondent's office to discuss her problems on a free-floating basis. She also noted that he discussed his problems with her, including his family situation.

Ms. Besch testified about sexual activities over the course of her involvement with Respondent, including use of sexual paraphernalia at his office.

Ms. Besch testified extensively about the end of the relationship with Respondent and its effect on her. She left the impression that she considered him to be a "god" and that the termination of the affair had left her unable to hold a job and unable to engage in intimate relationships with men. The demeanor of Ms. Besch was of someone who has been unable to cope with various situations due to the continuing adverse impact on her of the termination of this affair in November of 1983.

An objective analysis of Ms. Besch's claims and her credibility is not a form of "blaming the victim" and should not be

viewed as such. The defense in this case has taken great pains to call into question the credibility of Ms. Besch and this evidence must also be carefully weighed.

Ms. Besch stated that her primary motive for going forward with this case was to assure that another woman would not be victimized by Respondent. The defense has provided testimony from witnesses who reported that Ms. Besch told them that she would "get" Respondent following his termination of the relationship with her.

Extensive testimony was heard about Ms. Besch's ability (or lack thereof) to successfully hold employment both prior to and after the time period in question here (roughly June, 1982 - November, 1983). It appears that Ms. Besch was able to make a favorable initial impression during the interview process with prospective employers. She was able to function independently but could not take directions and supervision well. Testimony was also heard about Ms. Besch's threat of legal actions against employers when she faced reprimand or discharge for her employment-related activities. The picture painted by her employers (both before and after Respondent) was one of an individual who would lash out if she did not get her way. And the descriptions of her performance by these employers was vastly different from the details provided by Ms. Besch in her testimony.

The pattern of Ms. Besch's employment history does not show evidence of a vast change as a result of her affair with Respondent, as she has proposed in her testimony.

Similarly, Ms. Besch was asked on several occasions during her testimony about her relationships with men both prior to and after her affair with Respondent. She testified in these



proceedings on September 17 and 18, 1987 and January 26 and 28, 1988. At no time was there any mention of a significant relationship with a man in her life at the time of her testimony; the impression which was left by Ms. Besch was that she was still unable to cope with male-female intimacies due to the effect of the affair with Respondent. Yet on November 16, 1987, between the dates of her testimony, Ms. Besch was married to a 28 year old male. (Respondent's Exhibit 26).

Recall by Ms. Besch also plays a role in analysis of her credibility. Ms. Besch's testimony is replete with visceral and caustic statements about Respondent, supplying damaging quotations from conversations which took place in 1982 and 1983. Yet, when questions about other topics are raised (i.e., what she told Respondent about her past psychiatric history; why a prescription for tetracycline was written; who filled out/supplied information for insurance forms), her recall fades.

Ms. Besch seems to consistently attempt to provide testimony which she believes will be most damaging to Respondent, not the least of which concerns the use of sexual paraphernalia. Those sexual devices were allegedly kept in a location which was accessible by other office personnel, yet several witnesses with access to that area testified and none ever saw such devices present.

Dr. Pundy testified extensively about his entanglement with Ms. Besch. He was very controlled and straightforward as a witness. He did not leave the impression that he was attempting to avoid any question put to him, even during cross-examination by Department counsel. He projected an image of someone earnestly attempting to provide information as it was requested.



I find it quite difficult to believe Ms. Besch on the ultimate factual issues concerning when she began to engage in sexual activity with Respondent. Her son's testimony lends little support given the limited description of the individual he saw with his mother and the countervailing testimony supported by credit card records that Respondent was not in the area on the possible dates in question.

I find it much more reasonable to believe Respondent's account that the sexual activity did not begin until the summer of 1983. I also find it much more reasonable to believe that Ms. Besch formally ceased to be Respondent's patient in June of 1982 and that she did not become his employee until July of 1982.

After a review of all of the evidence and taking into account the demeanor of the witnesses, I am resolving the essential factual disputes against Ms. Besch's version and in favor of Respondent. Therefore, Respondent's version of the supportive counseling provided by Ms. Besch under his supervision to several of his patients will also be given credibility. Her account, which projects a much more intrusive role as a therapist without supervision, will be discounted.

Review does not end at this credibility finding, however. If we assume that Respondent provided brief, supportive psychotherapy to Ms. Besch from March through June 5, 1982; that the formal psychiatric relationship ended on June 5, 1982; that he hired her to work in his office in July of 1982; that he utilized her to provide support to some of his patients under his supervision; that he began a sexual affair with her in the summer of 1983; that the affair was ended in November of 1983, the next

level of analysis is to determine whether any breach of standards of practice has resulted from those activities.

The Department presented Dr. James Cavanaugh as its expert witness on the practice issues. When asked to consider this case with the scenario set forth above, Dr. Cavanaugh relied upon the psychiatric phenomena of transference and countertransference to explain his analysis. Dr. Cavanaugh saw a continuum leading from the psychiatrist/patient relationship which initially elicited a transfer of feeling which Ms. Besch had for someone else onto Respondent through the countertransference of Respondent's feelings for someone else onto Ms. Besch. Dr. Cavanaugh did not see these psychiatric states conveniently ending when formal therapy ended. He found that they were complicated by the hiring of Ms. Besch shortly after her formal therapy had ended and by the utilization of her by Respondent to provide counselling in his office. Adding the sexual relations exacerbated the problem.

Dr. Cavanaugh believed that Respondent breached standards of care applicable to psychiatrists by not recognizing and appropriately reacting to the issues of transference and countertransference in this case.

The defense provided several experts, whose credentials match those of Dr. Cavanaugh's, who disagreed with his analysis in whole or in part. Dr. Patrick Staunton did not find the necessary link to transference and countertransference which Dr. Cavanaugh found. Dr. Anne Seiden could not find factors in the record of this case which would lead to Dr. Cavanaugh's conclusions of transference/countertransference. Additionally, Gary Schoener, a psychologist in the State of Minnesota who evaluated Respondent with the acquiescence

of the Department, found nothing in the record or his evaluation to pinpoint countertransference as the explanation for the events in this case.

Similarly, none of Respondent's experts found anything unusual or improper about the use by Respondent of Ms. Besch in a supportive role for some of his patients. Nor did they find it unacceptable or unusual that a therapist would seek to hire a former patient who might be able to perform functions related to his office practice for which he had a present need to employ someone.

The consensus of opinion of Respondent's experts was that Respondent's activities should not be viewed as a continuum but as discreet acts, none of which violated standards applicable to him.

The question of sex with a former patient poses a particularly thorny problem in this case. Since there are no formal ethical rules of the profession on this subject which have been provided by the parties, it appears that a case-by-case factual analysis is required. I have concluded that sex did not occur between Respondent and Ms. Besch for at least one year after the therapy relationship ended. An employer-employee relationship began shortly after the therapy ended and was ongoing during the later sexual encounters.

Gary Schoener spoke to this issue. Some background on him is in order, however, before his opinion is set forth. The Department did not object to Schoener's evaluation of Respondent. Schoener has been extensively involved with evaluation/ treatment of professionals who sexually exploit their patients. He has been called upon to assess a practitioner and testify concerning his assessment in criminal and administrative proceedings. He is not a



"defendant's expert": rather, his assessments have been utilized as the basis for discipline of professional licenses in similar proceedings and have resulted in criminal penalties as well.

Following evaluation of Respondent, Schoener concluded that there was no reason to believe that Respondent had utilized his position as a psychotherapist to exploit the therapy relationship such that Ms. Besch would engage in sex with him. Additionally, Schoener did not see Respondent posing a threat to female patients in the future.

#### CONCLUSIONS OF LAW

The Department is obligated to establish, by clear and convincing evidence, that a violation of the standards applicable to Respondent occurred. In attempting to do so, evidence which would have established improper sexual activity by Respondent during his treatment of a patient has not been found to be credible. The evidence which has been found to be credible has been analyzed for breaches of the standards of practice applicable. The Department's expert testimony, when weighed in light of the countervailing expert testimony, does not establish clearly and convincingly that a violation of the Medical Practice Act occurred.

#### RECOMMENDATION

We are not called upon here to express moral indignation and outrage over the extramarital affair of a member of the medical profession. To do so would be easy in light of the accepted facts of this case. The duty here is to evaluate whether those generally denigrated moral failings constitute a breach of laws applicable to the practice of the profession, and if a violation is found, to apply an appropriate remedy. Since I cannot find a violation of the



law applicable to the professional activities of the Respondent, I cannot recommend that his license be disciplined.

I therefore recommend that the license of Andrew Pundy (No. 036-053081) to practice as a physician and surgeon remain in good standing.

DATED:

May 9, 1988

Thomas R. Chiola

THOMAS R. CHIOLA  
ADMINISTRATIVE LAW JUDGE

TRC:kai

## DEPARTMENT OF PROFESSIONAL REGULATION

DEPARTMENT OF PROFESSIONAL REGULATION  
of the State of Illinois. Complainant

ANDREW FUNDY  
License No. 036-053081. Respondent

No. 86-54

ORDER DENYING MOTION FOR REHEARING

This matter having come before the Medical Disciplinary Board of the Department of Professional Regulation of the State of Illinois, and the Medical Disciplinary Board, having made certain Findings of Fact, Conclusions of Law and a Recommendation to the Director of the Department; and the Respondent having filed a written Motion for Rehearing;

NOW, THEREFORE, I, STEPHEN F. SELCKE, DIRECTOR OF THE DEPARTMENT OF PROFESSIONAL REGULATION of the State of Illinois, after reviewing the case, including the Hearing Officer's Report, the Board's Findings, the Motion for Rehearing, the Department's response and the Respondent's Reply and Motion for Instructions, FIND:

1. That I have jurisdiction of the parties and the subject matter herein;
2. That Respondent's Motion for Instructions, etc., is denied as to Respondent's Abstract;
3. That oral argument on the Motion for Rehearing is not necessary for a clear understanding of the issues presented;
4. That Respondent has failed to allege any new evidence to warrant a rehearing; and
5. That substantial justice has been done in this case.

IT IS THEREFORE ORDERED that the Motion for Rehearing is DENIED.

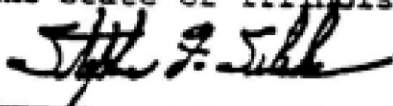
FURTHERMORE, I, STEPHEN F. SELCKE, Director of the Department of Professional Regulation, adopt the Findings of Fact, Conclusions of Law and Recommendation of the Medical Disciplinary Board in this matter.

IT IS THEREFORE ORDERED that the Certificate of Registration, License No. 036-053081, heretofore issued to Andrew Pundy to carry on practice as a Physician and Surgeon in the State of Illinois is hereby suspended for Six (6) Months, to be followed by a period of probation of Two (2) Years. During the probationary period, the Respondent shall continue therapy, and Respondent's treating therapist shall report quarterly to the Department on Respondent's progress in a form acceptable to the Department.

IT IS FURTHER ORDERED that Respondent immediately surrender said Certificate of Registration and all other indicia of licensure to the Department of Professional Regulation of the State of Illinois. Upon failure to do so, the Department shall seize such indicia of licensure.

DATED THIS 21 DAY OF May, 1989.

DEPARTMENT OF PROFESSIONAL REGULATION  
of the State of Illinois

  
STEPHEN F. SELCKE  
DIRECTOR

SFS:HT:kai

STATE OF ILLINOIS

DEPARTMENT OF REGISTRATION AND EDUCATION

DEPARTMENT OF REGISTRATION AND EDUCATION )  
of the State of Illinois, Complainant )  
v. )  
ANDREW B. PUNDY )  
License No. 036-053081, Respondent )

No.

~~86-54~~  
~~86-715~~  
86-54

COMPLAINT

Now comes the DEPARTMENT OF REGISTRATION AND EDUCATION of the State of Illinois, by its Chief of Prosecutions, Shari Dam, and as its COMPLAINT against Andrew B. Pundy, Respondent, complains as follows:

COUNT I: SEX WITH PATIENT

1. Andrew B. Pundy is presently the holder of a Certificate of Registration as a Physician and Surgeon in the State of Illinois, License No. 036-053081, issued by the Department of Registration and Education of the State of Illinois. Said license is presently in active status.
2. At all relevant times, Respondent held himself out as a psychiatrist and maintained an office in Chicago, Illinois.
3. Beginning in February, 1982, Respondent rendered psychiatric and other medical care to Ms. Rebecca B.
4. Respondent ceased to render psychiatric and medical care to Rebecca B. on or about November 27, 1983.
5. During the period Respondent was acting as Rebecca B's psychiatrist and physician, he regularly engaged in sexual acts with Rebecca B.



6. During the course of rendering psychiatric and other medical care to Rebecca B., Respondent frequently told her at length about his personal problems, his family problems, and his problems with other patients, focusing attention to his problems instead of addressing her therapeutic needs.
7. During the course of rendering psychiatric and other medical care to Rebecca B., Respondent divulged to her confidential information about other of his patients.
8. Such conduct by Respondent served no therapeutic purpose for Rebecca B., but served only to gratify Respondent's sexual and other needs.
9. Respondent knew or should have known that his conduct was not therapeutically justified and might cause Rebecca B. severe emotional distress, confusion and anxiety.
10. Respondent's conduct, as set forth above, constitutes immoral conduct in practice as a physician, in violation of Illinois Revised Statutes (1981, 1983), Chapter 11, paragraph 4433(20).
11. Respondent's conduct, as set forth above, constitutes repeated acts of gross misconduct, in violation of Illinois Revised Statutes (1981, 1983), Chapter 111, paragraph 4433(20).
12. Respondent's conduct, as set forth above, constitutes professional incompetence as manifested by poor standards of care, in violation of Illinois Revised Statutes (1981, 1983), Chapter 111, paragraph 4433(25).

13. Respondent's conduct, as set forth above, constitutes dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public, in violation of Illinois Revised Statutes (1981, 1983), Chapter 111, paragraph 4433(5).
14. The foregoing acts and/or omissions are grounds for revocation or suspension of a Certificate of Registration pursuant to Illinois Revised Statutes (1981, 1983), Chapter 111, paragraph 4433.

COUNT II: DUAL RELATIONSHIP

- 1-4. Paragraphs 1-4 of Count I are here realleged as paragraphs 1-4 of this Count.
5. In June of 1982, at Respondent's request, Rebecca B. became Respondent's salaried office manager.
6. On the date Rebecca B. became Respondent's office manager, she was still Respondent's patient.
7. Rebecca B. continued as an employee and patient of the Respondent through November 27, 1983.
8. By employing Rebecca B. in June of 1982, Respondent created a "dual relationship" in which he was both physician and employer.
9. Creating and continuing in such a "dual relationship" exhibited a poor standard of care.
10. Respondent's conduct, as set forth above, constitutes professional incompetence as manifested by poor standards of care, in violation of Illinois Revised Statutes (1981, 1983), Chapter 111, paragraph 4433(25).

11. Respondent's conduct, as set forth above, constitutes dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public, in violation of Illinois Revised Statutes (1981, 1983), Chapter 111, paragraph 4433(5).
12. The foregoing acts and/or omissions are grounds for revocation or suspension of a Certificate of Registration pursuant to Illinois Revised Statutes (1981, 1983), Chapter 111, paragraph 4433.

COUNT III: UNTRAINED THERAPIST

- 1-7. Paragraphs 1-7 of Count II are hereby realleged as paragraphs 1-7 of this Count.
8. During her employment by the Respondent, Rebecca B., at Respondent's specific request, acted as an unlicensed therapist for certain of Respondent's patients.
9. Rebecca B. did not have appropriate training or experience to act as a therapist for Respondent's patients.
10. Rebecca B. told Respondent that she did not have adequate training or experience to act as a therapist for Respondent's patients.
11. Respondent failed to adequately supervise Rebecca B. in her activities as a therapist in his office.
12. Respondent billed the patients that Rebecca B. treated at the same rates he normally charged for his services.

13. Respondent conduct, as set forth above, constitutes professional incompetence as manifested by poor standards of care, in violation of Illinois Revised Statutes (1981, 1983), Chapter 111, paragraph 4433(25).
14. Respondent's conduct, as set forth above, constitutes dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public, in violation of Illinois Revised Statutes (1981, 1983), Chapter 111, paragraph 4433 (5).
15. The foregoing acts and/or omissions are grounds for revocation or suspension of a Certificate of Registration pursuant to Illinois Revised Statutes (1981, 1983), Chapter 111, paragraph 4433.

WHEREFORE, based on the foregoing allegations, the DEPARTMENT OF REGISTRATION AND EDUCATION of the State of Illinois, by Shari Dan, its Chief of Prosecutions, prays that the physician and surgeon license of Andrew B. Pundy be suspended, revoked, or otherwise disciplined.

DEPARTMENT OF REGISTRATION AND  
EDUCATION of the State of Illinois

BY: Shari Dan  
Shari Dan  
Chief of Prosecutions

Hal Taylor  
Attorney for the Department  
of Registration and Education  
of the State of Illinois  
100 West Randolph Street  
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Chicago, Illinois 60601  
312/917-4594

SD:HT:rj



STATE OF ILLINOIS

DEPARTMENT OF PROFESSIONAL REGULATION

DEPARTMENT OF PROFESSIONAL REGULATION  
of the State of Illinois, Complainant

v.

ANDREW PUNDY  
License No. 036-053081, Respondent

No. 86-54  
86-716

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDATION TO THE DIRECTOR

Now comes the Medical Disciplinary Board (hereinafter sometimes referred to as the "Board") of the Department of Professional Regulation of the State of Illinois and, after conducting a hearing in this matter, a majority of its members hereby makes the following Findings of Fact, Conclusions of Law and Recommendation to the Director:

FINDINGS OF FACT

1. Andrew Pundy, Respondent, is now a duly registered physician and surgeon in the State of Illinois, having been issued a Certificate of Registration, License No. 036-053081, by the Department of Professional Regulation. Respondent's license is in active status.
2. On November 17, 1986 the Department filed a Complaint against Dr. Pundy (Respondent) which alleged that he had engaged in sexual acts with one of his female patients while she was under his care. The Complaint further alleged that Respondent engaged in an improper "dual relationship" with the female patient, acting as both her psychiatrist and employer. Additional allegations included that Respondent inappropriately utilized this individual as a therapist in his office

although she did not have the training or experience to do so.

3. Pre-hearing procedure delayed the beginning of evidentiary proceedings until September 17, 1987.

Evidentiary hearings were held on the following dates (Board members present on those dates appear in parentheses):

September 17, 1987	(Dr. Caruso) (Mr. Wikoff)	February 3, 1988	(Dr. Caruso) (Mr. Wikoff)
September 18, 1987	(Dr. Watts) (Mr. Wikoff)	February 4, 1988	(Mr. Wikoff)
October 28, 1987	(Dr. Caruso) (Mr. Wikoff)	February 15, 1988	(Mr. Wikoff)
November 3, 1987	(Dr. Watts) (Mr. Wikoff)	February 16, 1988	(Mr. Wikoff)
November 4, 1987	(Dr. Caruso) (Mr. Wikoff)	March 2, 1988	(Mr. Wikoff)
November 24, 1987	(Mr. Wikoff)	March 30, 1988	(Mr. Wikoff)
January 26, 1988	(Dr. Caruso) (Mr. Wikoff)	March 31, 1988	(Mr. Wikoff)
January 28, 1988	(Dr. Caruso) (Mr. Wikoff)	April 12, 1988	

4. A quorum of the Board was either present or listened to or reviewed the transcript of the evidence presented on the above dates, as evidenced by their signatures below.
5. Respondent was present at the hearing and was represented by counsel, namely, Sandra Nye.
6. The Department was represented at the hearing by its attorneys, Hal Taylor and John M. Goldberg.

7. After the presentation of all evidence and arguments, the Medical Disciplinary Board deliberated and made its Findings of Fact, Conclusions of Law and Recommendation to the Director.
8. The record in this case exceeds two thousand five hundred (2500) pages of transcript and includes approximately forty (40) exhibits. An exhaustive review of the activities of Respondent and the female in question, Rebecca Besch, has been explored.
9. There is no contest that Respondent treated Ms. Besch beginning sometime in March of 1982 for what Dr. Pundy diagnosed as acute anxiety disorder related to her employment and financial situation. It is also uncontested that sometime in early July of 1982 Respondent hired Ms. Besch to work in his office on Michigan Avenue in Chicago. The parties also agree that sexual relations took place between Respondent and Ms. Besch. There were disagreements about:
  - a) the date on which the psychiatrist/patient relationship ended;
  - b) the date on which the sexual relations began;
  - c) the role Ms. Besch played as therapist/co-therapist in Respondent's office.
10. The parties agree that if the Respondent engaged in sexual relations with Ms. Besch while she was his patient, then he has violated the standards of practice applicable to him. The defense in this case argues that Ms. Besch was no longer a patient when sexual relations began.

11. In arriving at factual findings, the credibility of statements made by Ms. Besch and Respondent must be taken into account in deciding which factual allegations have been proven.
12. Rebecca Besch is an intelligent, articulate, 45 year old woman who provided the primary complaint against Respondent. By her account, she met Respondent in March of 1982 while she was hospitalized at Illinois Masonic Hospital, in Chicago for a viral infection. When no cause for her illness could be readily determined, her treating practitioner suggested a psychiatric consult, which brought in the Respondent. Ms. Besch saw Respondent in scheduled therapy sessions at his office on Michigan Avenue in Chicago in March and April of 1982. She was once again hospitalized in May of 1982 for a hysterectomy and continued to see Respondent after that hospitalization in regularly scheduled therapy sessions at his office.
13. Ms. Besch stated that she first engaged in sexual activities with Respondent on June 12 or June 15, 1982. She described in some detail the first encounter and noted that their sexual activity went on until late November of 1983.
14. Ms. Besch testified that she was approached by Respondent to work for him after their initial sexual encounter. She said that she performed various services for him between June 16, 1982, and July 1, 1982, as her initial employment duties, for which she



received compensation in July of 1982. The checks included in Department's Exhibit No. 8 seem to bear out this portion of Ms. Besch's testimony. Her regular office duties began in July.

15. Respondent admitted speaking to Ms. Besch by telephone a couple of times in June and to seeing her two or three times before she began work in July.
16. Although she and Respondent no longer engaged in regularly scheduled therapy sessions after June 5, 1982, she considered Respondent to be her therapist. Ms. Besch noted that the employment arrangement allowed her to be present in Respondent's office to discuss her problems on a free-floating basis. She also noted that he discussed his problems with her, including his family situation.
17. Ms. Besch testified about sexual activities over the course of her involvement with Respondent, including use of sexual paraphernalia at his office.
18. Ms. Besch testified extensively about the end of the relationship with Respondent and its effect on her. She left the impression that she considered him to be a "god" and that the termination of the affair and her job with the Respondent had left her unable to hold a job and unable to successfully engage in intimate relationships with men. The demeanor of Ms. Besch was of someone who has been unable to cope with various situations due to the continuing adverse impact on her of the termination of this affair in November of

1983. There was also extensive testimony about her "suicide gesture" (as the defense characterized it) in which she took a disputed quantity of Tranxene approximately a day after being fired by the Respondent and was taken by Dr. Pundy to a hospital for emergency treatment.

19. The Hearing Officer's Report notes that Ms. Besch stated that her primary motive for going forward with this case was to assure that another woman would not be victimized by Respondent. The defense provided testimony from witnesses who reported that Ms. Besch told them that she would "get" Respondent following his termination of the relationship with her, but the Board notes that these threats seem to have come within a relatively short period after termination, when bitterness over these events would not be unexpected and, while Ms. Besch did express concern over the Respondent's possible future actions, the transcript shows that she testified that she was advised to bring this matter to the Department's attention.
20. The defense in this case has taken great pains to call into question the credibility of Ms. Besch, and this evidence must also be carefully weighed.
21. Extensive and time-consuming testimony was heard in this case with regard to Ms. Besch's employment history, and the Hearing Officer has commented upon the effect of this testimony on his credibility

findings. The Board is not convinced that either the testimony of Ms. Besch or her employers should be given much weight in these proceedings. All who testified on the employment history issues have obvious interests to protect, some of them legal, and therefore can be expected to remember events and situations in a light most favorable to themselves. More importantly, whether Ms. Besch's work problems stem from Respondent's actions or other factors does not relate in any meaningful way with the medical issues in this case except to indicate that in March of 1982, Ms. Besch's problems functioning in the workplace may have been far more serious than Dr. Pundy realized.

22. The Hearing Officer comments unfavorably upon Ms. Besch's "visceral and caustic" comments. The Board notes that the record in this case is replete with visceral and caustic comments--not all of which were made by Ms. Besch. All Board members who attended these hearings are aware of the agitated atmosphere under which this case was tried.
23. Likewise the Board does not attach the same significance as the Hearing Officer to Ms. Besch's current inability to remember in greater detail what she told Dr. Pundy about her past psychiatric history during a period when all parties would concede that she was under some degree of psychiatric stress. Whatever she told Dr. Pundy was sufficient for him to

be aware on March 8, 1982, of at least "one past psych (sic) hospitalization five years before and two years of outpatient therapy" (Department's Exhibit No. 15).

24. That Ms. Besch does not remember why a prescription for Tetracycline was written in October of 1983 is also of minor importance given the passage of time. However, the testimony about the filling out of insurance application forms is extremely troubling to the Board. Whether or not Ms. Besch actually filled out all of the information contained on these forms herself, signed off on forms filled out by others, or, as she testified, signed blank forms, she is responsible for their content, and important information was left off, and incorrect information is found on Respondent's Exhibit 7. Ms. Besch's explanations on these points are not wholly satisfactory, though the Board would not go so far as to conclude that conscious fraud was committed.
25. However, Dr. Pundy's explanations for how questioned information got on "Attending Physician's Statements" submitted in connection with Ms. Besch's disability claims, or how he received payments from third-party payors at his billing rates rather than reduced rates for services provided by Ms. Besch, and his contention that he did not know how much Ms. Besch was at any point being paid because he customarily signed checks in blank, are also unsatisfactory and raise questions about his credibility.



26. The Department was also able to show that Dr. Pundy's testimony given in this case about how Ms. Besch's medical records came to be destroyed or lost differed significantly from the answer he gave in interrogatories in the civil case. (Department's Exhibit 16)
27. While the Board members who attended the hearings agree with the Hearing Officer that Dr. Pundy's manner of testifying was very controlled, they do not agree, based upon their own viewing of his demeanor, that he never attempted to avoid answering questions in a way that might damage his position. As an example, that there existed a second appointment book other than the one the defense sought to use in this trial might never have been revealed except for the Hearing Officer's timely questioning. The inconsistencies noted in the record also serve to illustrate that a controlled demeanor may not always be an absolute guarantee of truthfulness.
28. The question of when sex began illustrates the inherent difficulty of making factual determinations on contested issues in this case. The Hearing Officer concludes that the Respondent is telling the truth, and that sex began in the summer of 1983. Yet Ms. Besch's son testified that he briefly saw Dr. Pundy in bed with his mother in the summer of 1982, having observed what he recognized as Dr. Pundy's car parked in her driveway.

29. The Hearing Officer concludes that Dr. Pundy's testimony is supported by "credit card records" to show that the Respondent was not in the area when the first sexual encounter supposedly occurred. Therefore, he finds that the corroborative evidence is present in this instance that is so often missing throughout this record.
30. However, the records that the Hearing Officer relies upon--a customer Visa statement, with no copies of the actual receipts--are not a part of the record in this case. After the Respondent admitted that both he and his wife had access to the account and that there was no way to tell from the statement whether he or his wife made the charges, the statement was never offered into evidence. Given these circumstances, the Board does not rely on these "records" at all.
31. That being the case, it falls to the Board to state that were this corroborating witness not Ms. Besch's son, or were the standard of proof less than clear and convincing, the Board would be inclined to give credence to this incident and find against Dr. Pundy on the timing of the first sex issue.
32. In short, the Board concludes, based upon the members' viewing of the witnesses' demeanor and review of the record, that, at the very least, both Ms. Besch and Dr. Pundy attempted to tailor their testimony to their own ends, and therefore, neither Ms. Besch nor Dr. Pundy should be wholly believed as to factual matters

absent corroborating evidence. This is why the Board cannot agree with the Hearing Officer that Dr. Pundy's version of the contested events is always the true one.

33. Reasonableness and credibility have less to do with the Board's decision than lack of independent corroborating evidence of either the Department's or Respondent's positions. Therefore, this Board's decision is less based on a determination of factual issues, than on fundamental principles to be observed by all doctors, especially those working in the mental health field, regarding the entering into sexual relationships with "former" patients.
34. The Board concludes that the Respondent provided what he characterized as brief, supportive psychotherapy to Ms. Besch from March through June 5, 1982; that the formal psychiatric relationship ended on June 5, 1982; that between June 5, 1982, and the day Ms. Besch actually began work in his office, Respondent and Ms. Besch talked by telephone at least three times and met at least twice, and that she provided some services to him for which she was later compensated; that he hired her to work in his office in July of 1982; that he utilized her to provide support to some of his patients under his supervision; that he began a sexual affair with her at least as early as the summer of 1983; that the affair and employment was unilaterally ended by the Respondent in late November of 1983. The next level of analysis is to determine

whether any breach of standards of practice has resulted from those activities.

35. The parties provided the Board with no conclusive rules of ethical conduct dealing with sexual relationships with former patients. However the rules applicable to relations with current patients provide some guidance. While the medical profession has acknowledged that psychiatrists share the same goals as other physicians, there are special ethical problems that differ in coloring and degree from those faced by doctors operating in other specialties. As stated in The Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry:

"[ ] the necessary intensity of the therapeutic relationship may tend to activate sexual and other needs and fantasies on the part of both the patient and therapist while weakening the objectivity necessary for control."

The American Psychiatric Association then goes on to conclude that sexual relations with a patient are unethical.

36. Further, Section 2-D of the American Psychiatric Association's Opinions of the Ethics Committee on the Principles of Medical Ethics notes that "exploitation of a patient can occur after termination of treatment." (emphasis added).



37. The Department presented Dr. James Cavanaugh as its expert witness on the practice issues. When asked to consider this case using Dr. Pundy's description of his relationship with Ms. Besch, Dr. Cavanaugh relied upon the psychiatric phenomena of transference and countertransference to explain his analysis. Dr. Cavanaugh testified that:

"[A] patient always brings into therapy issues, experiences, psychological experiences of the past that do not have, as their origin, what is going on in the therapeutic relationship, itself. How those transference dynamics are handled is part of the training, skill, of the therapist in the continuation of the therapeutic process with the patient. . . . Countertransference relates to the therapeutic dynamic where the therapist has the potentiality of bringing into the therapeutic relationship in question issues from the past that are not directly related to the process of ongoing therapy, and which if not identified by the therapist, could interfere with or distort the process of therapy with the patient." (tr. p. 484, 488).

Dr. Cavanaugh saw a continuum leading from the psychiatrist/patient relationship which initially elicited transference feelings of Ms. Besch onto the Respondent and a countertransference of Respondent's

feelings onto Ms. Besch. Dr. Cavanaugh did not see these psychiatric states conveniently ending when formal therapy ended. He found that they were complicated by the hiring of Ms. Besch shortly after her formal therapy had ended and by the utilization of her by Respondent to provide counselling in his office. Adding the sexual relations exacerbated the problem. Dr. Cavanaugh also noted the danger of patient self-harm at the end of such a relationship as one of the possible detrimental results of sexual activity between the therapist and a patient. Dr. Cavanaugh rejected the defense's contention that such transference/countertransference issues don't arise in the context of brief therapy modalities.

38. Dr. Cavanaugh believed that Respondent breached standards of care applicable to psychiatrists by not recognizing and appropriately reacting to the issues of transference and countertransference in this case.
39. The defense provided several experts who disagreed with his analysis in whole or in part. Dr. Patrick Staunton did not find the necessary link to transference and countertransference which Dr. Cavanaugh found. Dr. Anne Seiden could not find factors in the record of this case which would lead to Dr. Cavanaugh's conclusions of transference/countertransference. Additionally, Gary Schoener, a psychologist in the State of Minnesota who evaluated Respondent with the acquiescence of the Department,

found nothing in the record or his evaluation to pinpoint countertransference as the explanation for the events in this case.

40. Similarly, none of Respondent's experts found sufficient basis to conclude that Respondent's use of Ms. Besch in a supportive role for some of his patients was improper. Nor did they find it unacceptable or unusual that a therapist would seek to hire a former patient who might be able to perform functions related to his office practice for which he had a present need to employ someone.
41. The consensus of opinion of Respondent's experts was that Respondent's activities should not be viewed as a continuum but as discreet acts, none of which violated standards applicable to him.
42. Gary Schoener spoke to this issue. Some background on him is in order, however, before his opinion is set forth. The Department did not object to Schoener's evaluation of Respondent. Schoener has been extensively involved with evaluation/ treatment of professionals who sexually exploit their patients. He has been called upon to assess a practitioner and testify concerning his assessment in criminal and administrative proceedings. He is not a "defendant's expert"; rather, his assessments have been utilized as the basis for discipline of professional licenses in similar proceedings and have resulted in criminal penalties as well.

44. Following evaluation of Respondent, Schoener concluded that there was no reason to believe that Respondent had utilized his position as a psychotherapist to exploit the therapy relationship such that Ms. Besch would engage in sex with him. Additionally, Schoener did not see Respondent posing a threat to female patients in the future.
45. As impossible as it is to resolve all of the factual disputes in this case, a pattern of behavior does emerge from the record upon which the Board can make its decision.
46. After review of all of the exhibits and the huge transcript in this case, it becomes clear that this patient was extremely vulnerable and troubled in March of 1982. She had a long-standing psychiatric history that evidenced past failures to successfully cope with what were admittedly at times extremely stressful events, including the apparent drug dependence of her daughter. There was a past history of hospitalization for depression, at least one suicide gesture or attempt, at least two years of outpatient psychotherapy and a present inability to handle her work situation that was severe enough to lead to another hospitalization and a psychiatric consult by Dr. Pundy.
47. Likewise, the testimony and evidence of Ms. Besch's inability to secure alternative employment up to the time that Dr. Pundy hired her, and her financial demands (as testified to by the Respondent), indicate to the Board, and should have indicated to Dr. Pundy,



that she continued to have problems after June of 1982 which were related to the issues which brought her under his care initially.

48. Dr. Pundy ignored these warning signs, did not reinstitute therapy or secure other treatment for Ms. Besch. Instead, to complicate matters, perhaps during a period when he admits that he was feeling "distant" from his marriage, he consented to enter into a sexual relationship with Ms. Besch.
49. Even after Ms. Besch's suicide gesture or attempt in November of 1983, the Respondent did not do anything further to see to her proper care except to take her to the emergency room and pay her severance monies.
50. One of the dangers touched upon during this trial is the loss of the therapist to the patient once a sexual relationship begins. Respondent began to be lost to Ms. Besch when he began to act in his own interest and not in the interest of Ms. Besch. This was no less than abandonment by degrees, culminated by the events of November, 1983.
51. The Department was not able to show that Dr. Pundy consciously exploited this patient. But conscious exploitation is not necessary to find that a psychiatrist has not met the standards of care owed to a patient. This is an issue that Dr. Cavanaugh touched on in his testimony, and the medical members of the Board refer to their own training to recall being taught how to handle seductive or difficult patients.

This area of social relations with patients and former patients is not so fraught with specialty-specific experiences that the board members, even the public members, cannot determine what is right.

52. What is right is that a patient should not be harmed by a doctor. That principle applies whether formal termination has occurred or not. An obligation attaches to a patient once he or she comes under the care of a physician that does not disappear until there has been a proper ending to that relationship.
53. As has been noted above, a special measure of emotional dependence arises, indeed may even be encouraged in many cases, from the psychiatrist/patient relationship--no matter how brief or supportive--that finds its genesis in the emotional vulnerability of the patient. At best, Dr. Pundy was not fully conscious of this patient's vulnerability, and this insensitivity to her condition ultimately led him to act in ways clearly detrimental to her welfare.
54. That this patient may have been a most difficult case, and during the course of this hearing, may not always have been the most sympathetic of witnesses, should not relieve the Respondent of his responsibility to have properly treated her, as his training should have prepared him to do. Having failed to fully resolve Ms. Besch's initial problems, having allowed his own feelings, both towards Ms. Besch and apparently towards his marriage, to cloud his objectivity to the

detriment of this patient, he must suffer the consequences.

#### CONCLUSIONS OF LAW

1. That the Medical Disciplinary Board of the Department of Professional Regulation of the State of Illinois has jurisdiction over the subject matter and of the parties in this case.
2. That as to Count I of the Complaint, the Medical Disciplinary Board finds that the Respondent's conduct, as set forth in these Findings of Fact, constitutes unprofessional conduct of a character likely to harm the public, and that such conduct violates Illinois Revised Statutes (1981,1983), Chapter 111, paragraph (4433) 5.
3. Given the Board's conclusion as to Count I, the Board finds it unnecessary to reach the issues raised in Counts II and III and declines to draw Conclusions of Law as to these Counts.

#### RECOMMENDATION

The Medical Disciplinary Board of the Department of Professional Regulation of the State of Illinois, after making the above Findings of Fact and Conclusions of Law, recommends to Stephen F. Selcke, the Director of the Department of Professional Regulation, that the Certificate of Registration, License No. 036-053081, of Andrew Pundy be suspended for Six (6) Months, to be followed by a period of probation of Two (2) Years. During the probationary period, the Respondent shall continue therapy, and Respondent's treating therapist shall report quarterly to the Department on Respondent's progress in a form acceptable to the Department.

DATED THIS 6<sup>th</sup> DAY OF July, 1988

CHAIRMAN

13 Carson MD

MEMBER

[Signature]

MEMBER

A. Dambuck MD

MEMBER

Bonlay MD

MEMBER

[Signature]



STATE OF ILLINOIS

DEPARTMENT OF PROFESSIONAL REGULATION

DEPARTMENT OF PROFESSIONAL REGULATION )  
of the State of Illinois, Complainant )  
v. )  
ANDREW PUNDY )  
License No. 036-053081, Respondent )

No. 86-54  
~~86-716~~

REPORT AND RECOMMENDATION

This Report and Recommendation is being submitted to the Medical Disciplinary Board pursuant to Section 35 of the Medical Practice Act which became effective on May 22, 1987 (Public Act 85-0004). A complete copy of the transcript of these proceedings was submitted to me on May 2, 1988.

BACKGROUND

On November 17, 1986 the Department filed a Complaint against Dr. Pundy (Respondent) which alleged that he had engaged in sexual acts with one of his female patients while she was under his care. The Complaint further alleged that Respondent engaged in an improper "dual relationship" with the female patient, acting as both her psychiatrist and employer. Additional allegations included that Respondent inappropriately utilized this individual as a therapist in his office although she did not have the training or experience to do so.

Pre-hearing procedure delayed the beginning of evidentiary proceedings until September 17, 1987. Evidentiary hearings were held on the following dates (Board members present on those dates appear in parentheses):

September 17, 1987	(Dr. Caruso) (Mr. Wikoff)	February 3, 1988	(Dr. Caruso) (Mr. Wikoff)
September 18, 1987	(Dr. Watts) (Mr. Wikoff)	February 4, 1988	(Mr. Wikoff)
October 28, 1987	(Dr. Caruso) (Mr. Wikoff)	February 15, 1988	(Mr. Wikoff)
November 3, 1987	(Dr. Watts) (Mr. Wikoff)	February 16, 1988	(Mr. Wikoff)
November 4, 1987	(Dr. Caruso) (Mr. Wikoff)	March 2, 1988	(Mr. Wikoff)
November 21, 1987	(Mr. Wikoff)	March 30, 1988	(Mr. Wikoff)
January 26, 1988	(Dr. Caruso) (Mr. Wikoff)	March 31, 1988	(Mr. Wikoff)
January 28, 1988	(Dr. Caruso) (Mr. Wikoff)	April 12, 1988	

The Department was represented by Hal Taylor and John Goldberg. The Respondent was represented by Sandra Nye.

#### FINDINGS OF FACT

The record in this case exceeds two thousand five hundred (2500) pages of transcript and includes approximately forty (40) exhibits. An exhaustive review of the activities of Respondent and the female in question, Rebecca Besch, has been explored.

There is no contest that Respondent treated Ms. Besch beginning sometime in March of 1982 for anxiety related to her employment. It is also uncontested that sometime in July of 1982 Respondent hired Ms. Besch to work in his office on Michigan Avenue in Chicago. The parties also agree that sexual relations took place between Respondent and Ms. Besch.

The crucial disagreements which must be resolved include:

- a) the date on which the psychiatrist/patient relationship ended;

- b) the date on which the sexual relations began;
- c) the role Ms. Besch played as therapist/co-therapist in Respondent's office;
- d) whether the standards of practice applicable to Respondent were breached.

The parties agree that, if the Respondent engaged in sexual relations with Ms. Besch while she was his patient, then he has violated the standards of practice applicable to him.

In arriving at factual findings, the credibility of statements made by Ms. Besch and Respondent must be determined. In arriving at the conclusion as to whether or not Respondent violated standards of practice, an analysis of the position of the expert witnesses must be undertaken.

Rebecca Besch is an intelligent, articulate, 45 year old woman who provided the primary complaint against Respondent. By her account, she met Respondent in March of 1982 while she was hospitalized at Illinois Masonic Hospital in Chicago for a viral infection. When no cause for her illness could be readily determined, her treating practitioner suggested a psychiatric consult, which brought in the Respondent. Ms. Besch saw Respondent in scheduled therapy sessions at his office on Michigan Avenue in Chicago in March and April of 1982. She was once again hospitalized in May of 1982 for a hysterectomy and continued to see Respondent after that hospitalization in regularly scheduled therapy sessions at his office.

Ms. Besch stated that she first engaged in sexual activities with Respondent on June 12 or June 15, 1982. She



described in some detail the first encounter and noted that their sexual activity went on until November of 1983.

Ms. Besch testified that she was approached by Respondent to work for him after their initial sexual encounter. She said that she performed various services for him between June 16, 1982 and July 1, 1982 as her initial employment duties for which she received compensation in July of 1982. Her regular office duties began in July.

Although she and Respondent no longer engaged in regularly scheduled therapy sessions after June 5, 1982, she considered Respondent to be her therapist. Ms. Besch noted that the employment arrangement allowed her to be present in Respondent's office to discuss her problems on a free-floating basis. She also noted that he discussed his problems with her, including his family situation.

Ms. Besch testified about sexual activities over the course of her involvement with Respondent, including use of sexual paraphernalia at his office.

Ms. Besch testified extensively about the end of the relationship with Respondent and its effect on her. She left the impression that she considered him to be a "god" and that the termination of the affair had left her unable to hold a job and unable to engage in intimate relationships with men. The demeanor of Ms. Besch was of someone who has been unable to cope with various situations due to the continuing adverse impact on her of the termination of this affair in November of 1983.

An objective analysis of Ms. Besch's claims and her credibility is not a form of "blaming the victim" and should not be



viewed as such. The defense in this case has taken great pains to call into question the credibility of Ms. Besch and this evidence must also be carefully weighed.

Ms. Besch stated that her primary motive for going forward with this case was to assure that another woman would not be victimized by Respondent. The defense has provided testimony from witnesses who reported that Ms. Besch told them that she would "get" Respondent following his termination of the relationship with her.

Extensive testimony was heard about Ms. Besch's ability (or lack thereof) to successfully hold employment both prior to and after the time period in question here (roughly June, 1982 - November, 1983). It appears that Ms. Besch was able to make a favorable initial impression during the interview process with prospective employers. She was able to function independently but could not take directions and supervision well. Testimony was also heard about Ms. Besch's threat of legal actions against employers when she faced reprimand or discharge for her employment-related activities. The picture painted by her employers (both before and after Respondent) was one of an individual who would lash out if she did not get her way. And the descriptions of her performance by these employers was vastly different from the details provided by Ms. Besch in her testimony.

The pattern of Ms. Besch's employment history does not show evidence of a vast change as a result of her affair with Respondent, as she has proposed in her testimony.

Similarly, Ms. Besch was asked on several occasions during her testimony about her relationships with men both prior to and after her affair with Respondent. She testified in these

proceedings on September 17 and 18, 1987 and January 26 and 28, 1988. At no time was there any mention of a significant relationship with a man in her life at the time of her testimony; the impression which was left by Ms. Besch was that she was still unable to cope with male-female intimacies due to the effect of the affair with Respondent. Yet on November 16, 1987, between the dates of her testimony, Ms. Besch was married to a 28 year old male. (Respondent's Exhibit 26).

Recall by Ms. Besch also plays a role in analysis of her credibility. Ms. Besch's testimony is replete with visceral and caustic statements about Respondent, supplying damaging quotations from conversations which took place in 1982 and 1983. Yet, when questions about other topics are raised (i.e., what she told Respondent about her past psychiatric history; why a prescription for tetracycline was written; who filled out/supplied information for insurance forms), her recall fades.

Ms. Besch seems to consistently attempt to provide testimony which she believes will be most damaging to Respondent, not the least of which concerns the use of sexual paraphernalia. Those sexual devices were allegedly kept in a location which was accessible by other office personnel, yet several witnesses with access to that area testified and none ever saw such devices present.

Dr. Pundy testified extensively about his entanglement with Ms. Besch. He was very controlled and straightforward as a witness. He did not leave the impression that he was attempting to avoid any question put to him, even during cross-examination by Department counsel. He projected an image of someone earnestly attempting to provide information as it was requested.

I find it quite difficult to believe Ms. Besch on the ultimate factual issues concerning when she began to engage in sexual activity with Respondent. Her son's testimony lends little support given the limited description of the individual he saw with his mother and the countervailing testimony supported by credit card records that Respondent was not in the area on the possible dates in question.

I find it much more reasonable to believe Respondent's account that the sexual activity did not begin until the summer of 1983. I also find it much more reasonable to believe that Ms. Besch formally ceased to be Respondent's patient in June of 1982 and that she did not become his employee until July of 1982.

After a review of all of the evidence and taking into account the demeanor of the witnesses, I am resolving the essential factual disputes against Ms. Besch's version and in favor of Respondent. Therefore, Respondent's version of the supportive counseling provided by Ms. Besch under his supervision to several of his patients will also be given credibility. Her account, which projects a much more intrusive role as a therapist without supervision, will be discounted.

Review does not end at this credibility finding, however. If we assume that Respondent provided brief, supportive psychotherapy to Ms. Besch from March through June 5, 1982; that the formal psychiatric relationship ended on June 5, 1982; that he hired her to work in his office in July of 1982; that he utilized her to provide support to some of his patients under his supervision; that he began a sexual affair with her in the summer of 1983; that the affair was ended in November of 1983, the next



level of analysis is to determine whether any breach of standards of practice has resulted from those activities.

The Department presented Dr. James Cavanaugh as its expert witness on the practice issues. When asked to consider this case with the scenario set forth above, Dr. Cavanaugh relied upon the psychiatric phenomena of transference and countertransference to explain his analysis. Dr. Cavanaugh saw a continuum leading from the psychiatrist/patient relationship which initially elicited a transfer of feeling which Ms. Besch had for someone else onto Respondent through the countertransference of Respondent's feelings for someone else onto Ms. Besch. Dr. Cavanaugh did not see these psychiatric states conveniently ending when formal therapy ended. He found that they were complicated by the hiring of Ms. Besch shortly after her formal therapy had ended and by the utilization of her by Respondent to provide counselling in his office. Adding the sexual relations exacerbated the problem.

Dr. Cavanaugh believed that Respondent breached standards of care applicable to psychiatrists by not recognizing and appropriately reacting to the issues of transference and countertransference in this case.

The defense provided several experts, whose credentials match those of Dr. Cavanaugh's, who disagreed with his analysis in whole or in part. Dr. Patrick Staunton did not find the necessary link to transference and countertransference which Dr. Cavanaugh found. Dr. Anne Seiden could not find factors in the record of this case which would lead to Dr. Cavanaugh's conclusions of transference/countertransference. Additionally, Gary Schoener, a psychologist in the State of Minnesota who evaluated Respondent with the acquiescence



of the Department, found nothing in the record or his evaluation to pinpoint countertransference as the explanation for the events in this case.

Similarly, none of Respondent's experts found anything unusual or improper about the use by Respondent of Ms. Besch in a supportive role for some of his patients. Nor did they find it unacceptable or unusual that a therapist would seek to hire a former patient who might be able to perform functions related to his office practice for which he had a present need to employ someone.

The consensus of opinion of Respondent's experts was that Respondent's activities should not be viewed as a continuum but as discreet acts, none of which violated standards applicable to him.

The question of sex with a former patient poses a particularly thorny problem in this case. Since there are no formal ethical rules of the profession on this subject which have been provided by the parties, it appears that a case-by-case factual analysis is required. I have concluded that sex did not occur between Respondent and Ms. Besch for at least one year after the therapy relationship ended. An employer-employee relationship began shortly after the therapy ended and was ongoing during the later sexual encounters.

Gary Schoener spoke to this issue. Some background on him is in order, however, before his opinion is set forth. The Department did not object to Schoener's evaluation of Respondent. Schoener has been extensively involved with evaluation/ treatment of professionals who sexually exploit their patients. He has been called upon to assess a practitioner and testify concerning his assessment in criminal and administrative proceedings. He is not a

"defendant's expert"; rather, his assessments have been utilized as the basis for discipline of professional licenses in similar proceedings and have resulted in criminal penalties as well.

Following evaluation of Respondent, Schoener concluded that there was no reason to believe that Respondent had utilized his position as a psychotherapist to exploit the therapy relationship such that Ms. Besch would engage in sex with him. Additionally, Schoener did not see Respondent posing a threat to female patients in the future.

#### CONCLUSIONS OF LAW

The Department is obligated to establish, by clear and convincing evidence, that a violation of the standards applicable to Respondent occurred. In attempting to do so, evidence which would have established improper sexual activity by Respondent during his treatment of a patient has not been found to be credible. The evidence which has been found to be credible has been analyzed for breaches of the standards of practice applicable. The Department's expert testimony, when weighed in light of the countervailing expert testimony, does not establish clearly and convincingly that a violation of the Medical Practice Act occurred.

#### RECOMMENDATION

We are not called upon here to express moral indignation and outrage over the extramarital affair of a member of the medical profession. To do so would be easy in light of the accepted facts of this case. The duty here is to evaluate whether those generally denigrated moral failings constitute a breach of laws applicable to the practice of the profession, and if a violation is found, to apply an appropriate remedy. Since I cannot find a violation of the

law applicable to the professional activities of the Respondent, I cannot recommend that his license be disciplined.

I therefore recommend that the license of Andrew Pundy (No. 036-053081) to practice as a physician and surgeon remain in good standing.

DATED:

May 9, 1988

Thomas R. Chiola

THOMAS R. CHIOLA  
ADMINISTRATIVE LAW JUDGE

TRC:kai

## DEPARTMENT OF PROFESSIONAL REGULATION

DEPARTMENT OF PROFESSIONAL REGULATION  
of the State of Illinois. Complainant

ANDREW PUNDY

License No. 036-053081.

Respondent

No. 86-54

ORDER DENYING MOTION FOR REHEARING

This matter having come before the Medical Disciplinary Board of the Department of Professional Regulation of the State of Illinois, and the Medical Disciplinary Board, having made certain Findings of Fact, Conclusions of Law and a Recommendation to the Director of the Department; and the Respondent having filed a written Motion for Rehearing;

NOW, THEREFORE, I, STEPHEN F. SELCKE, DIRECTOR OF THE DEPARTMENT OF PROFESSIONAL REGULATION of the State of Illinois, after reviewing the case, including the Hearing Officer's Report, the Board's Findings, the Motion for Rehearing, the Department's Response and the Respondent's Reply and Motion for Instructions, FIND:

1. That I have jurisdiction of the parties and the subject matter herein;
2. That Respondent's Motion for Instructions, etc., is denied as to Respondent's Abstract;
3. That oral argument on the Motion for Rehearing is not necessary for a clear understanding of the issues presented;
4. That Respondent has failed to allege any new evidence to warrant a rehearing; and
5. That substantial justice has been done in this case.



IT IS THEREFORE ORDERED that the Motion for Rehearing is DENIED.

FURTHERMORE, I, STEPHEN F. SELCKE, Director of the Department of Professional Regulation, adopt the Findings of Fact, Conclusions of Law and Recommendation of the Medical Disciplinary Board in this matter.

IT IS THEREFORE ORDERED that the Certificate of Registration, License No. 036-053081, heretofore issued to Andrew Pundy to carry on practice as a Physician and Surgeon in the State of Illinois is hereby suspended for Six (6) Months, to be followed by a period of probation of Two (2) Years. During the probationary period, the Respondent shall continue therapy, and Respondent's treating therapist shall report quarterly to the Department on Respondent's progress in a form acceptable to the Department.

IT IS FURTHER ORDERED that Respondent immediately surrender said Certificate of Registration and all other indicia of licensure to the Department of Professional Regulation of the State of Illinois. Upon failure to do so, the Department shall seize such indicia of licensure.

DATED THIS 26 DAY OF May, 1989.

DEPARTMENT OF PROFESSIONAL REGULATION  
of the State of Illinois

Stephen F. Selcke  
STEPHEN F. SELCKE  
DIRECTOR

SFS:HT:kai

STATE OF ILLINOIS

DEPARTMENT OF REGISTRATION AND EDUCATION

DEPARTMENT OF REGISTRATION AND EDUCATION )  
of the State of Illinois, Complainant )  
v. )  
ANDREW B. PUNDY )  
License No. 036-053081, Respondent )

No.

~~86-715~~

~~716~~  
86-54

COMPLAINT

Now comes the DEPARTMENT OF REGISTRATION AND EDUCATION of the State of Illinois, by its Chief of Prosecutions, Shari Dam, and as its COMPLAINT against Andrew B. Pundy, Respondent, complains as follows:

COUNT 1: SEX WITH PATIENT

1. Andrew B. Pundy is presently the holder of a Certificate of Registration as a Physician and Surgeon in the State of Illinois, License No. 036-053081, issued by the Department of Registration and Education of the State of Illinois. Said license is presently in active status.
2. At all relevant times, Respondent held himself out as a psychiatrist and maintained an office in Chicago, Illinois.
3. Beginning in February, 1982, Respondent rendered psychiatric and other medical care to Ms. Rebecca B.
4. Respondent ceased to render psychiatric and medical care to Rebecca B. on or about November 27, 1983.
5. During the period Respondent was acting as Rebecca B's psychiatrist and physician, he regularly engaged in sexual acts with Rebecca B.

6. During the course of rendering psychiatric and other medical care to Rebecca B., Respondent frequently told her at length about his personal problems, his family problems, and his problems with other patients, focusing attention to his problems instead of addressing her therapeutic needs.
7. During the course of rendering psychiatric and other medical care to Rebecca B., Respondent divulged to her confidential information about other of his patients.
8. Such conduct by Respondent served no therapeutic purpose for Rebecca B., but served only to gratify Respondent's sexual and other needs.
9. Respondent knew or should have known that his conduct was not therapeutically justified and might cause Rebecca B. severe emotional distress, confusion and anxiety.
10. Respondent's conduct, as set forth above, constitutes immoral conduct in practice as a physician, in violation of Illinois Revised Statutes (1981, 1983), Chapter 11, paragraph 4433(20).
11. Respondent's conduct, as set forth above, constitutes repeated acts of gross misconduct, in violation of Illinois Revised Statutes (1981, 1983), Chapter 111, paragraph 4433(20).
12. Respondent's conduct, as set forth above, constitutes professional incompetence as manifested by poor standards of care, in violation of Illinois Revised Statutes (1981, 1983), Chapter 111, paragraph 4433(25).

13. Respondent's conduct, as set forth above, constitutes dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public, in violation of Illinois Revised Statutes (1981, 1983), Chapter 111, paragraph 4433(5).
14. The foregoing acts and/or omissions are grounds for revocation or suspension of a Certificate of Registration pursuant to Illinois Revised Statutes (1981, 1983), Chapter 111, paragraph 4433.

COUNT II: DUAL RELATIONSHIP

- 1-4. Paragraphs 1-4 of Count I are here realleged as paragraphs 1-4 of this Count.
5. In June of 1982, at Respondent's request, Rebecca B. became Respondent's salaried office manager.
6. On the date Rebecca B. became Respondent's office manager, she was still Respondent's patient.
7. Rebecca B. continued as an employee and patient of the Respondent through November 27, 1983.
8. By employing Rebecca B. in June of 1982, Respondent created a "dual relationship" in which he was both physician and employer.
9. Creating and continuing in such a "dual relationship" exhibited a poor standard of care.
10. Respondent's conduct, as set forth above, constitutes professional incompetence as manifested by poor standards of care, in violation of Illinois Revised Statutes (1981, 1983), Chapter 111, paragraph 4433(25).



11. Respondent's conduct, as set forth above, constitutes dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public, in violation of Illinois Revised Statutes (1981, 1983), Chapter 111, paragraph 4433(5).
12. The foregoing acts and/or omissions are grounds for revocation or suspension of a Certificate of Registration pursuant to Illinois Revised Statutes (1981, 1983), Chapter 111, paragraph 4433.

COUNT III: UNTRAINED THERAPIST

- 1-7. Paragraphs 1-7 of Count II are hereby realleged as paragraphs 1-7 of this Count.
8. During her employment by the Respondent, Rebecca B., at Respondent's specific request, acted as an unlicensed therapist for certain of Respondent's patients.
9. Rebecca B. did not have appropriate training or experience to act as a therapist for Respondent's patients.
10. Rebecca B. told Respondent that she did not have adequate training or experience to act as a therapist for Respondent's patients.
11. Respondent failed to adequately supervise Rebecca B. in her activities as a therapist in his office.
12. Respondent billed the patients that Rebecca B. treated at the same rates he normally charged for his services.

13. Respondent conduct, as set forth above, constitutes professional incompetence as manifested by poor standards of care, in violation of Illinois Revised Statutes (1981, 1983), Chapter 111, paragraph 4433(25).
14. Respondent's conduct, as set forth above, constitutes dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public, in violation of Illinois Revised Statutes (1981, 1983), Chapter 111, paragraph 4433 (5).
15. The foregoing acts and/or omissions are grounds for revocation or suspension of a Certificate of Registration pursuant to Illinois Revised Statutes (1981, 1983), Chapter 111, paragraph 4433.

WHEREFORE, based on the foregoing allegations, the DEPARTMENT OF REGISTRATION AND EDUCATION of the State of Illinois, by Shari Dan, its Chief of Prosecutions, prays that the physician and surgeon license of Andrew B. Pundy be suspended, revoked, or otherwise disciplined.

DEPARTMENT OF REGISTRATION AND  
EDUCATION of the State of Illinois

BY: Shari Dan  
Shari Dan  
Chief of Prosecutions

Hal Taylor  
Attorney for the Department  
of Registration and Education  
of the State of Illinois  
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